

BEFORE THE  
CALIFORNIA STATE AUDITOR  
BUREAU OF STATE AUDITS  
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Public Hearing

Citizen's Redistricting Commission - Proposed Regulations

555 Capitol Mall, 5<sup>th</sup> Floor  
Sacramento, CA

TUESDAY, JUNE 1, 2010  
10:00 A.M.

Reported by:  
Tahsha Sanbrailo

## APPEARANCES

### REPRESENTATIVES

Sharon Reilly, Chief Legal Counsel  
Donna Neville, Associate Chief Counsel  
Steven Russo, Chief of Investigations

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P R O C E E D I N G S

2 JUNE 1, 2010

10:05 A.M.

3 MS. REILLY: Good morning. On behalf of the State  
4 Auditor, I would like to thank all of you for being here  
5 today and taking interest in this very important process. I  
6 am Sharon Reilly, Chief Counsel, and with me today is Steven  
7 Russo, our Chief of Investigations, and Donna Neville, our  
8 Associate Chief Counsel.

9 As you know, the purpose of today's meeting is to  
10 receive public comment about Draft Regulations that have  
11 been posted on our website. I hope you have all had a  
12 chance to review them and we look forward to your comments.  
13 Also, in addition to taking public comments here, we have  
14 comment cards in the back if you are interested in providing  
15 a written comment, but it must be turned in by the end of  
16 the meeting for us to be able to consider it. So, with that  
17 said, I think I am going to turn it over to Steven Russo  
18 right now, who is going to talk a little bit more about the  
19 logistics of receiving the comments and an overview of the  
20 Regulations.

21 MR. RUSSO: Thanks, Sharon. I would also like to  
22 welcome everyone to this hearing on our second phase of  
23 Regulations to implement the Voters 1<sup>st</sup> Act. On April 16<sup>th</sup>,  
24 2010, we issued for public comment Proposed Regulations  
25 regarding the final phase of the application process, the

1 establishment of the Commission as an independent body, and  
2 the restrictions on the activities of Commissioners, once  
3 they are appointed. We have been receiving public comments  
4 throughout this period from April 16<sup>th</sup> to today, with today  
5 being the deadline, the final day that we will be receiving  
6 public comment on the proposed Regulations. As Sharon  
7 mentioned, we have information packets located at the back  
8 of the room regarding our Proposed Regulations. Also, for  
9 those of you who are watching us on the Internet, the  
10 information contained in the information at the back of the  
11 room is also available on the Regulations page of our  
12 website.

13           At this morning's hearing, we would like members of  
14 the public to make oral comments to us regarding the  
15 regulations. In making your comments, we would ask you to  
16 be as specific as possible in what you have to say about the  
17 Regulations, to start by stating your name, and if you do  
18 not like something about the Regulations, if you could give  
19 us suggestions for how you think the Regulations should be  
20 written, that would be helpful. It is one thing to say,  
21 "Well, I don't really like what you've written here," that  
22 is fine, we certainly want to hear that, but what is most  
23 helpful to us are any suggestions that you have for how the  
24 Regulations can be written differently. In response to your  
25 comments, members of the panel may ask questions to try to

1 better understand the nature of your comment, or also to  
2 probe perhaps for solutions to any concerns that you might  
3 raise.

4 We are still accepting written comments throughout  
5 today, until 5:00. As Sharon mentioned, we have written  
6 public comment cards at the back of the room for your  
7 convenience, so if you do not want to make an oral  
8 presentation to us, but you want to make some comment about  
9 the Regulations, you are welcome to fill out one of those  
10 cards and submit the card to us, or to otherwise provide us  
11 with written comment.

12 For anyone watching on the Internet, again, it is  
13 not too late, you can still provide comment today, but it  
14 must be received by 5:00 today. You can provide your  
15 comment by e-mail, by e-mailing [Voters1stAct@Auditor.ca.gov](mailto:Voters1stAct@Auditor.ca.gov),  
16 or you can fax your comment to us at (916) 319-9295. And if  
17 you did not get that information, you can certainly go to  
18 our website and see that contact information there under  
19 "Contact Information."

20 After receiving all of your comments regarding these  
21 Regulations, we will, as we see necessary, draft revisions  
22 to the Regulations. We would hope that, if we are going to  
23 revise the Regulations, we will put forward those revisions  
24 later this month. When we revise the Regulations, we will  
25 post the revised Regulations on our website and we will also

1 open up another 15-day comment period for you to tell us  
2 what you think about any revisions. With our Revisions, we  
3 intend to post a Memorandum to explain what we did, or did  
4 not do, and why we did that, so you can get an idea of our  
5 thinking. And we will have that 15-day comment period, but  
6 I would not anticipate a hearing at the end of those 15  
7 days, so this should be the only hearing that we will hold  
8 on the Regulations, barring something unforeseen. And with  
9 that, I have nothing further. Does anyone from the panel  
10 have anything to add?

11 MS. REILLY: Just to add to that, today's hearing is  
12 limited to the Regulations, the second round of Regulations  
13 that we have at the back of the room. I know there are a  
14 lot of interesting things about what the Commission itself  
15 will be doing, but our role is limited to the selection of  
16 the Commissioners, so comments need to be limited to that.

17 Okay, Gloria, do you have the sign-in order sheet,  
18 because we are going to be taking comments by sign-in order?  
19 I will give everybody an opportunity to speak, even if they  
20 have not signed in. Okay, first up we have Gus. Did you  
21 want to make any public comments? No? Okay, Deborah?  
22 Okay, I think it says Joan Matthews. Do you have any  
23 comments?

24 MS. MATTHEWS: Will we be allowed to comment as you  
25 go through these Regulations? Or shall we make our

1 statements now?

2 MS. REILLY: You should make them now. And if you  
3 could come up to the podium and please state your name for  
4 the record.

5 MS. MATTHEWS: Thank you. My name is Joan Matthews  
6 and I am from Tracy, California. I am a little concerned  
7 about the training process in the Regulations. It states  
8 that the first eight chosen randomly will be trained  
9 separately? Is that my understanding? And then they will  
10 be trained initially and then the following six will be  
11 brought up to speed? I am not really clear on that and what  
12 the purpose would be of just designating out the first eight  
13 without using the whole Commission being trained at the same  
14 time.

15 MS. REILLY: So the idea is for the first eight to  
16 get the same training as we provided to the Applicant Review  
17 Panel, so that they have the same training and understanding  
18 re districting when they are selecting the final six  
19 Commissioners.

20 MR. RUSSO: The focus of the training for the first  
21 eight is on selecting the final six.

22 MS. MATTHEWS: Oh, I see.

23 MR. RUSSO: The whole Commission will then, of  
24 course, have to receive training on how to do the actual re-  
25 districting. This is just on the selection of the final



1 six.

2 MS. MATTHEWS: Thank you very much.

3 MS. NEVILLE: And also, just to respond to your  
4 concern about whether that would be separately or not, those  
5 first eight members would receive a considerable amount of  
6 their training in an open public meeting; that training  
7 would be provided in that format, much the same way as it  
8 was for the Applicant Review Panel.

9 MS. REILLY: Okay, next on the list we have Astrid  
10 Garcia. Okay, Gary? And Trudy, you are probably with the  
11 group. Okay, so if you guys want to present now?

12 MS. COPELL [phonetic]: Good morning, I am Malaca  
13 Copell [phonetic] from California Forward, and I am here on  
14 behalf of a group of us who will be providing comments  
15 today, and I am joined here, and some are in person and some  
16 were not able to be here, but have signed a letter that I  
17 just submitted to you, and they are California Common Cause,  
18 Asian Pacific American Legal Center, California State NAACP,  
19 the League of Women Voters of California, the National  
20 Association of Latino Elected and Appointed Officials  
21 Educational Fund, and the Asian Law Caucus. And we want to  
22 start by thanking you all for the opportunity to comment on  
23 these Regulations. We were very impressed by the  
24 thoroughness shown by your staff in developing the  
25 Regulations, and we very much applaud your intent to

1 facilitate the smooth implementation of the Act by filling  
2 in some of the details.

3 I am going to ask the members of my group to comment  
4 on specific points and, obviously, we will be happy to take  
5 any questions that you have. Thank you.

6 MS. GARCIA: Good morning. My name is Astrid Garcia  
7 with the National Association of Latino Elected and  
8 Appointed Officials Educational Fund, and thank you for the  
9 opportunity to share with you some of our recommendations  
10 and concerns this morning. As a first point, we are  
11 concerned with the regulation which bans the future public  
12 service of Commissioners; this is in reference to Section  
13 60815.1(c) through (e). Specifically, we appreciate the  
14 importance of shielding Commissioners from political  
15 influence; however, we feel that the Regulations, as  
16 currently written, may be too broad. Our concern is the  
17 possibility of losing well qualified candidates in the  
18 Commission who may feel the need to step down or withdraw  
19 from the process, and we hope that the following  
20 recommendations will help find the appropriate balance going  
21 forward. So our recommendation is that the 10-year ban  
22 should apply to City and County government only. Under the  
23 proposed regulation, the State Auditor defines public office  
24 of a County or City level as encompassing elected positions  
25 on the governing bodies of special district school

1 districts, joint powers authority, or other political  
2 subdivisions of the state if the boundaries of those  
3 entities coincide with, or include at least, one County or  
4 City. We believe the 10-year ban should only apply to  
5 positions involved in the overall governance of Counties and  
6 Municipalities for the following reasons: the first is a  
7 clarification of the use of the word "level." The drafters  
8 of the Voters First Act intended that the words "County or  
9 City level" only refer to positions involved with the  
10 overall governance of Counties and Cities. This is  
11 including, for example, County Board of Supervisors, elected  
12 county executive positions, Mayors, City Council members, or  
13 elected municipal positions. The State Auditor's Office  
14 defines the words "County or City level," the way the State  
15 Auditor has used these words, is in conflict with how the  
16 words are commonly used in other California statutes by  
17 California courts. The California statutes in California  
18 courts have frequently used the terms "County level" and  
19 "City level" to mean only County Government and City  
20 Government. Due to limited time, I am going to give just  
21 one example, but we do highlight several examples in the  
22 letter that is before you. So, as an example, the Welfare  
23 and Institutions Code describes the monitoring of States and  
24 Counties as monitoring at State and County levels;  
25 specifically, the section provides that the Department shall

1 ensure the performance outcomes are monitored at the State  
2 and County levels, in order to identify the extent to which  
3 the State and Counties have achieved the goal of the public  
4 law. So, given that this common usage of the terms "County  
5 level" and "City level," with both statutory and judicial  
6 authorities, the term "County" or "City" level in the Voters  
7 First Act should be similarly defined to mean only "County  
8 Government and City Government."

9           The second reason why we feel that the 10-year ban  
10 should only apply to "City and County Government" is that  
11 the Special Districts and School Districts have distinct  
12 functional characteristics from Cities and Counties; they  
13 are not in the same government hierarchy as Cities and  
14 Counties. Cities and Counties are distinguished from other  
15 local government entities based on the fact that they have  
16 power and authority over a broad range of policies and  
17 services for their residents. Special Districts and School  
18 Districts are created with responsibilities for a specific  
19 and limited range of policies and services. The two are not  
20 categorized at the same level in California law and  
21 governmental practice. We see that, in the California  
22 Constitution, the provisions for the formation and powers of  
23 Cities and Counties are in a completely separate Article  
24 pertaining to local governments, specifically, while the  
25 provisions for governing the formation of School Districts

1 and Special Districts are generally found in Sections  
2 relating to that specific function or responsibility of  
3 those entities. For example, the California Education Code  
4 addresses the organization of School Districts. The  
5 California Safety Code addresses Fire Protection Districts,  
6 and etc. Furthermore, the U.S. Census Bureau also  
7 recognizes the special nature of School Districts and  
8 Special Districts. The Bureau catalogues local government  
9 districts to include General Purpose and Special Purpose.  
10 General Purpose Governments include Counties,  
11 Municipalities, and Townships, while Special Purpose  
12 includes Districts that perform limited functions. Included  
13 in this Special Purpose category are School Districts.

14 To conclude, I have two additional considerations  
15 for the BSA regarding the ban. We feel that elected  
16 positions on County Boards of Education should not be  
17 subject to the 10-year ban because they fall under the  
18 Special Functions Purpose. While their name includes  
19 "County," the formation and governance of County Boards of  
20 Education is found in the Education Code, so they are in  
21 fact Special Districts. Additionally, the BSA should  
22 eliminate reference to the Joint Powers Authority and other  
23 political subdivisions, language that is found to be  
24 included in the 10-year ban. The 10-year ban should apply  
25 to members of the governing bodies of joint powers

1 authorities to the extent it applies to the elected  
2 positions they hold with the entities that are parties to  
3 such agreements that form the Joint Powers Authorities.  
4 Joint Powers Authorities by definition are formed when two  
5 or more public agencies enter an agreement to jointly  
6 exercise their common powers to administer or execute the  
7 agreement. California Government Code requires that the  
8 composition of Joint Powers Authorities be of officials  
9 elected to one or more of the governing bodies of the  
10 parties to the agreement that created this new body; thus,  
11 there are no officials who are elected by the public to  
12 serve on a Joint Powers Authority, they serve on the Joint  
13 Powers Authority in the capacity of their previously elected  
14 office. There is no need, therefore, to create restrictions  
15 on service to Joint Powers Authority.

16           Additionally, other political subdivisions should be  
17 removed from the language because it suggests that there are  
18 other local governments that would be covered by the 10-year  
19 ban and, again, we feel that the 10-year ban should be  
20 limited strictly to City and County Governments. Thank you.

21           MS. REILLY: Do any of the panel members have  
22 questions?

23           MR. RUSSO: I have a question. In your  
24 presentation, you made reference to a Welfare and  
25 Institutions Code Section. Do you have a citation for that

1 section?

2 MS. GARCIA: I do. It is actually found in your  
3 letter, if you turn to page - give me one second -

4 MS. NEVILLE: It is 10540.5. Is that the one?

5 MS. GARCIA: Yes, thank you. That was just one  
6 example. In the letter, you will find several references  
7 that we make to both the Code and how Boards, as well, in  
8 use of the term "City and County level" come in specifically  
9 as just "City and County Government."

10 MR. RUSSO: Okay, I have another question; it is  
11 kind of a broader question. In your proposal to restrict  
12 City and County level government to just City Government and  
13 County Government, I am trying to understand how, then, you  
14 make a distinction in the sense of how the ban should apply,  
15 in that, if you look at certain entities that are not City  
16 or County governmental entities, we will say something like  
17 the BART Board of Directors, which incorporates a huge area,  
18 and wields an awful lot of power, and you have individuals  
19 who are elected to office, you could argue that a person,  
20 for example, on the BART Board of Directors may have more  
21 power than someone who is sitting on a City Council in a  
22 small City. And so my question to you is, why shouldn't the  
23 ban apply equally to someone in a position like that, I  
24 would say again, using the example of BART Board of  
25 Directors, but there are a lot of other examples like that,

1 why shouldn't the ban apply equally to someone in that kind  
2 of position, as someone who is, say, on a City Council in a  
3 small city of maybe 10,000 people?

4 MS. GARCIA: I mean, I agree with you that the issue  
5 is complex and we are looking at it in terms of the language  
6 that is being used to apply broadly, not just for this  
7 redistricting process, but for future redistricting  
8 processes, as well. Similarly, I can give you an example of  
9 the Los Angeles Unified School District, which is a School  
10 District. And, according to the way the definition  
11 currently is, they would be banned, but then the Burbank  
12 School District, which is in Southern California, which is  
13 much smaller than L.A. Unified, would have more authority  
14 and be more of a City level as you have currently defined  
15 it, and have more power than the L.A. USD, which is a much  
16 larger government agency, and has a much larger budget. So,  
17 I mean, I think there are examples back and forth that we  
18 can give. I think what we are trying to do by giving you  
19 these recommendations are just perhaps some bits and pieces  
20 of information that will help think of when you use the  
21 words "City" and "County" in a functional way, so looking at  
22 government hierarchies as they are consistently used, and  
23 precedents set by California Code and statutes. So, I feel  
24 that these are just some recommendations that we have for  
25 you. We hope that you do take them into consideration



1 because we have put a lot of time and effort into trying to  
2 think of ways to address this issue. We agree that it is  
3 complex and we thank you for, you know, what you have done  
4 currently, and we feel that we can continue to fine tune it  
5 with some of these recommendations.

6 MR. RUSSO: Okay, thank you.

7 MS. REILLY: Anymore questions? Thank you.

8 MS. GARCIA: Thank you.

9 MS. SCHAFER: Hello, I am Trudy Schafer representing  
10 the League of Women Voters of California. And I would like  
11 to make a comment on the discussion you have just had about  
12 the first point in our joint letter, and that is that we  
13 have had a considerable amount of discussion among the  
14 framers of Prop. 11, and our concern as an organization that  
15 was one of the people who participated in the drafting,  
16 although we were not one of the three proponents as the  
17 Measure was submitted for Title and Summary, still, we  
18 became essentially co-proponents very early in the process.  
19 And it was our feeling that "City and County level" was  
20 intended to be interpreted in the way that Ms. Garcia talked  
21 about, by a functional understanding and of "County level"  
22 being basically the county and its various entities, like  
23 Board of Supervisors and the elected County Officers, and  
24 similarly for Cities.

25 I would like to speak to a couple of the points that

1 are in the joint letter you have got and I found a typo that  
2 we do intend to resubmit the letter, and so we will correct  
3 that. But I wanted to speak first to Section 3. We will  
4 that, in looking at Section 60858 of the Regulations, there  
5 should be no requirement for the partisan composition of the  
6 vote to elect the Commissioners who serve in the positions  
7 of Temporary Chair and Vice Chair for the meetings held by  
8 the first eight Commissioners. Our general feeling was  
9 that, although under the proposed 60858(e), the Temporary  
10 Chair and Vice Chair must be elected by the first - it is  
11 spelled out - the affirmative vote of five of the first  
12 eight Commissioners, and that it would be specified that at  
13 least two of those affirmative votes come from Commissioners  
14 registered with the largest political party, from the second  
15 largest political party, and one who is not registered with  
16 either of those. We are concerned mostly about making sure  
17 that the process goes very quickly and smoothly as the eight  
18 select the six. And we are concerned that that mandate for  
19 the vote would unduly delay the selection of the individuals  
20 who will preside over the meetings because of the time  
21 needed to obtain the consensus of the five Commissioners  
22 with that requisite partisan composition. We point out that  
23 the eight Commissioners will have a relatively short time to  
24 carry out the tasks that they have been assigned in  
25 selecting the remaining six, including conducting meetings,

1 reviewing application materials, obtaining additional  
2 information about Applicants deliberating and voting, and so  
3 in order for them to conduct business as expeditiously as  
4 possible, we think that there need not be that partisan  
5 breakdown.

6 I would point out that we do agree that, in the  
7 middle of proposed Section 60858(e), there is the  
8 requirement that the Chair and the Vice Chair, this  
9 Temporary Chair and Temporary Vice Chair, be from different  
10 political parties, and we do feel that that does belong in  
11 the regulation because that is in keeping with the overall  
12 partisan balance that was a major part of Prop. 11's  
13 framing.

14 MS. REILLY: So before you move on to your next  
15 point, I am going to ask the panel members if they have any  
16 questions.

17 MS. NEVILLE: I do not, thank you.

18 MR. RUSSO: No, I do not.

19 MS. SCHAFER: All right, thank you. And then I  
20 would like to skip to Section 6. This has to do with  
21 proposed Regulation 60804.1, that the State Auditor, we  
22 feel, should more narrowly define the appointed offices  
23 subject to the five-year ban on Commissioner service after  
24 they have served as Commissioners. We believe that,  
25 generally speaking, the proposed regulation is too broad in

1 restricting Commissioners from activities that they can do  
2 in those five years after they have served, or after they  
3 have been appointed. On the one hand, of course, there is  
4 the importance of shielding Commissioners from political  
5 influence and we believe that is a very important goal; on  
6 the other hand, we also want to prevent the prohibition from  
7 public service where there is no meaningful risk of undue  
8 political influence. And so, in weighing those two, both  
9 necessary goals, we felt that the way 60804.1 is written,  
10 that it is too narrow in its definition of what appointed  
11 offices can be served in by a Commissioner, after they have  
12 been serving. First and here is where there is a typo in  
13 the version you have, under 60804.1(b), that should be  
14 "one," one criterion for determining the appointed offices  
15 subject to the five-year ban is whether the office holder,  
16 in the words of the proposed regulation, "is appointed by  
17 any elected County or City Official." And we recommend that  
18 the five-year ban cover only offices appointed by members of  
19 the County Board of Supervisors, Mayors, or City Council  
20 members. We think that this parallels the prohibition at  
21 the Federal and the State level under the other proposed  
22 Regulation 60804.1(a), where only positions appointed by the  
23 Governor, a member of the State Legislature, or a member of  
24 the Board of Equalization are subject to the five-year ban.  
25 Then, in addition, looking at 60804.1(b)(iii), we are

1 concerned that that may define the appointed offices subject  
2 to the five-year ban too broadly, and we, in this case -  
3 maybe I should refer to the wording - part (b)(iii) says  
4 that one of the requirements would be that a public office  
5 entitles the office holder to do either or both of the  
6 following: make governmental decisions, either or both  
7 that, or receive compensation of a given level amount  
8 greater than \$5,000 per year, or per diem payments at a rate  
9 greater than \$100 per day. And we could come up with  
10 examples of how that is too restrictive; for example, the El  
11 Pueblo Board of Commissioners in Los Angeles governs the El  
12 Pueblo de Los Angeles Historical Monument, which is a  
13 department within the City of Los Angeles. It is a tourist  
14 destination owned by the City, El Pueblo is, that has  
15 museums, historic buildings, retail vendors, and the Mayor  
16 of Los Angeles appoints the Commissioners. So, according to  
17 the earlier part of the Regulation, this is an office that  
18 would be affected. The El Pueblo Board has the authority to  
19 make some, but not all, departmental decisions, so we feel  
20 it does satisfy the aspect of making these governmental  
21 decisions. Many of those can be, and in fact have been,  
22 overturned by the Los Angeles City Council, but still, it  
23 does seem to comply with that first section. Although the  
24 Pueblo Board does not have broad powers within the City of  
25 Los Angeles, and the Commissioners are not compensated for

1 their service, by the way that the regulation is written, a  
2 redistricting Commissioner would be ineligible to hold that  
3 office during the five years following his or her  
4 appointment to the redistricting Commission. And we think  
5 that is broader than the Act intended. I will be followed  
6 by a representative, well, the representative you have heard  
7 from, Analeyo [28:33], who will describe another variation  
8 of their opinion about this. I think part of what is  
9 difficult is that it is the sort of thing of trying to  
10 approve a negative, coming up with a case where if you made  
11 the change to requiring that both the government decisions  
12 and being compensated are needed, it is trying to find  
13 examples where, well, examples of Commissions where one or  
14 both apply, that would be obviously too broad or narrow,  
15 where the regulation would be just the right amount of  
16 breadth. And given that that is hard for us to do, hard to  
17 come up with examples on both sides, we feel that it would  
18 be better to take a different approach, entirely.

19 MS. REILLY: Okay, do the panel members have any  
20 questions?

21 MR. RUSSO: No.

22 MS. NEVILLE: No, thank you.

23 MS. REILLY: Okay, thank you.

24 MS. SCHAFER: Thank you.

25 MS. GARCIA: I just wanted to comment on two

1 footnotes that are in the letter, the first regarding the  
2 first point made by my colleague, which is Item 3. In  
3 addition to what has been stated, the NALEAO Educational  
4 Fund believes that, unless clearly compelled by the Act,  
5 there should be no requirements mandating the partisan  
6 composition of the group of Commissioners needed to take a  
7 particular Commission action. We believe that such mandates  
8 encourage Commissioners to view themselves as  
9 representatives of particular political parties or  
10 affiliations when serving on the Commission, and that their  
11 decisions must reflect their affiliations. We do not  
12 believe that this furthers one of the goals of the Act,  
13 which is to minimize undue partisan influences over the  
14 conduct of the Commissioners. And then, the second footnote  
15 I wanted to add is regarding Item 6, which is that the State  
16 Auditor should more narrowly define the appointed offices  
17 subject to the five-year ban on Commissioner service, and it  
18 is taking up your recommendation for language suggestions,  
19 and so in this point, the NALEAO Educational Fund is joined  
20 by the Asian Pacific American Legal Center in our  
21 recommendation that the State Auditor delete the phrase  
22 "either or" in the proposed regulation, which is Section  
23 60804.1(b)(iii). We believe that, for an appointed office  
24 to be subject to the five-year ban, the office must entitle  
25 the officeholder to both make governmental positions and

1 receive a minimum amount of compensation. Unless an office  
2 holder is entitled to do both, we do not believe that he or  
3 she is likely to be subject to the type of undue political  
4 influence which the Act intends to prohibit.

5 MS. REILLY: Okay, do the panel members have  
6 questions?

7 MR. RUSSO: I have a question on partisan breakdown  
8 of the eight, when they take action. Certainly something we  
9 looked at was the fact that, in the initiative itself, when  
10 it takes about actions taken by the entire Commission,  
11 specifically the adoption of maps, that there is a very  
12 specific partisan breakdown that is required, or a minimum  
13 partisan breakdown that is required, to ensure that the  
14 actions of the Commission are truly bipartisan; that is to  
15 say, that it is not a situation where the two parties are  
16 ganging up on a third, and so forth. And so I am interested  
17 in how you square those two things in the sense that, I  
18 mean, I hear your comment about it is important that the  
19 members of the Commission not see themselves as  
20 representatives of a political party, and we would certainly  
21 want that to be the case for the entire 14 members, but we  
22 are seeing in the Act that there is this partisan breakdown  
23 in the Act, itself, for the full Commission. So why, then,  
24 should we have a different set of rules for when the eight  
25 are acting, in order to select the six, which will affect



1 the bipartisanship of the entire Commission, once it is  
2 formed?

3 MS. GARCIA: I guess we believe in the ability of  
4 the Commissioners to be able to set aside their partisan -  
5 their party memberships, and to be able to look at the whole  
6 process, not through a partisan hat which the Act requires  
7 for the 14, but when the eight are being selected, to  
8 emphasize that, by having the partisan make-up for the  
9 composition, I think it is reemphasizing. So it is, as you  
10 see, something that our group went back and forth on, and we  
11 came out on the side that we feel, for this section, that  
12 part would create kind of an undue political party  
13 affiliation very early on in the process. So that is where  
14 we came out on the issue.

15 MR. RUSSO: Okay, thank you.

16 MS. NEVILLE: I had a question about the discussion  
17 that we were having about the definition of "appointed  
18 offices" and this issue of "either or both," and I  
19 appreciated the example that Trudy Schafer provided. Do you  
20 have any other examples that you could provide that would  
21 illustrate the implications of the proposed definition?

22 MS. GARCIA: We could definitely look into it and  
23 get back to you on that.

24 MS. REILLY: Okay, anymore questions?

25 MR. RUSSO: No.

1 MS. REILLY: Okay, thank you.

2 MS. COPELL [phonetic]: Malaca Copell from  
3 California Forward, and I wanted to speak to Point 2 in the  
4 letter. Under the proposed 60815(d) and (e), the 10-year  
5 ban applies to any elected office of County Government or  
6 office of City Government. Arguably, this would prohibit  
7 service with quasi-governmental entities such as local,  
8 county, or city neighborhood councils. And we wanted to say  
9 that we do not believe that it was the intent of the Act  
10 that the State Auditor intend to prohibit service with  
11 quasi-governmental entities, and we recommend that the State  
12 Auditor clarify this in the Final Regulations.

13 MS. REILLY: Do we have any questions? Okay.

14 MS. PIERCE: Good morning, I am Emily Pierce with  
15 California Common Cause. I am going to be addressing Point  
16 4 in the letter.

17 MS. REILLY: Okay.

18 MS. PIERCE: And this is on Regulation 60860. What  
19 we are concerned with is the section of the regulation that  
20 states that the first group of Commissioners can inquire  
21 about or seek additional information from the Applicants,  
22 including written responses to questions and interviews.  
23 While we certainly agree that the Applicants should be  
24 required to provide additional information, that that  
25 information may be necessary to the selection, we are

1 hopeful that regulations can be put in to provide for a  
2 respectful process. It is our fear that a single  
3 Commissioner might be able to press for questions that are  
4 outside of the sort of realm of what an Applicant should  
5 have to provide, and that by requiring unreasonable written  
6 responses, or unreasonable interview questions, a potential  
7 Applicant might be discouraged from retaining the seat. We  
8 are hopeful that, as a minimum safeguard, the Commissioners  
9 should only be able to request information that is  
10 reasonably relevant to the Application at that time.

11 MS. REILLY: Okay. Do the panel members have any  
12 questions?

13 MR. RUSSO: No.

14 MS. PIERCE: And then, for Point 5 in the letter,  
15 which is Section 60858, and this is our concern that there  
16 be a smooth transition for the first eight Commissioners, so  
17 that they are able to hit the ground running, given the  
18 short time period that they have. We were hopeful that some  
19 kind of facilitator could be brought into the process at  
20 that time, and we believe the BSA's intent to assign legal  
21 counsel at that initial meeting will fill that role and meet  
22 the need we see for knowledgeable facilitation and  
23 leadership during those initial meetings. We also note that  
24 the Regulations provide for a Temporary Chair and a  
25 Temporary Vice Chair to be appointed, and we would like to

1 suggest that different titles be used, which is "Moderator"  
2 and "Vice Moderator," given that this is a transitional  
3 role, until the full 14-member Commission is convened. We  
4 want to be able to give all 14 members a fair opportunity to  
5 be considered for those Chair and Vice-Chair positions, and  
6 by giving them different names, it would sort of ensure that  
7 fairness moving forward.

8 MS. REILLY: Do the panel members have any  
9 questions?

10 MR. RUSSO: No.

11 MS. NEVILLE: No.

12 MS. REILLY: Thank you.

13 MS. COPELL [phonetic]: That is the extent of the  
14 testimony of our group. I wanted to thank you again. We  
15 will submit a revised letter by the close of business today,  
16 electronically.

17 MS. REILLY: Okay, thank you very much. Is there  
18 anybody on this side of the room here that would like to  
19 make public comments?

20 MR. WALTON: Good morning. I am Sam Walton and I am  
21 here to make a brief comment on the Regulations. First of  
22 all, I would like to say that, you know, once again, I would  
23 like to commend the intense work that you guys have done,  
24 and the first section of this process has been very very  
25 effective, and we believe that the second phase is also

1 being just as effective. We had one minor language  
2 clarification that we wanted to propose, and it has to do  
3 with the actual selection, or the elimination of Applicants.  
4 The section we are looking at proposing language to is  
5 60841(b). And it describes what happens in Phase 2, and the  
6 reason we are proposing language there basically says no  
7 candidate -- essentially it says no candidate would be  
8 eliminated without there being a public vote from the panel,  
9 which I believe that is the intent. The reason we are  
10 raising this issue is because, while the regulation in  
11 subchapter 2 - 60836(e) - it defines what an Applicant - I  
12 mean, it says that all of the activity relating to an  
13 Applicant would be done in the open. And Section 60801  
14 defines an Applicant as someone who submits an application.  
15 Well, in the first phase, there were people who submitted  
16 applications, but they were not included in any kind of an  
17 open review. And I am thinking that this next phase may be  
18 a little more intense, and we could possibly eliminate that  
19 confusion by simply adding some clarifying language to  
20 41(b).

21 MS. REILLY: Do the panel members have any  
22 questions? No?

23 MR. WALTON: So I also prepared a written document.

24 MS. REILLY: Great, thank you.

25 MR. RUSSO: That will be helpful, thank you.

1 MS. REILLY: Thank you. So is there more public  
2 comment?

3 MS. GARCIA: Just one last one. An additional point  
4 that was in the letter that I wanted to highlight for the  
5 panel, and that is that the definition for paid staff, for  
6 any individual Legislators set forth in Section 60820.1(b)  
7 should be amended to include only those persons whose duties  
8 of employment are related to seeking and holding legislative  
9 office, as a distinction we wanted to make in the language.

10 MS. REILLY: Okay.

11 MR. RUSSO: I have a question with that because, how  
12 is it any different if a person is on the payroll of a  
13 member of the Legislature, in that Legislator's capacity as  
14 a member of the Legislature vs. owning a private business?  
15 In both instances, it seems like the individual is beholden  
16 to that member of the Legislature for a job. So how is it  
17 that we should - why would we want to make a distinction to  
18 say it is okay for a Commissioner to take money from a  
19 member of the Legislature for doing no work in a corporation  
20 vs. working as a member of a legislative staff?

21 MS. GARCIA: Yeah, I think the other extreme we were  
22 looking at is if somebody does landscaping for the house of  
23 a Legislature, according to the current language, that would  
24 be restricted, as well. And so we were trying to find the  
25 appropriate balance of the two, so perhaps, you know, that

1 was one suggestion that we gave is, by making the language  
2 just "seeking and holding legislative office" to make that  
3 distinction because, I agree, I think it could be both  
4 extremes, but just as it is currently written, it could be  
5 the other way, as well.

6 MR. RUSSO: I hear your comment, thank you.

7 MS. GARCIA: Thank you.

8 MS. REILLY: Is there anyone else on this side of  
9 the room that would like to make a public comment? How  
10 about this side of the room?

11 MR. WRIGHT: Good morning. I am Jim Wright, a voter  
12 from San Jose. This document has been forwarded to Ms.  
13 Gamino [phonetic] previously, so this is a copy that is in  
14 your hand. I had a few comments about things, questions  
15 that are raised in that document that perhaps I would like  
16 to highlight. And I know, Steven, we have had a discussion  
17 about a couple of these things before, too. In 60804, the  
18 reference to "State" and "Federal" offices needs to be  
19 segregated. They are kind of lumped together the way it is  
20 written and there are differences between how they should be  
21 handled relative to members of the Legislature, members of  
22 Congress, and segregating the wording might help there.  
23 Furthermore, I feel that all Federal offices need to be  
24 included when we are talking about appointments or the  
25 elected members of any of the three branches. They are

1 political by nature because they are high level officials  
2 working for the Government. They are serving at the  
3 pleasure of the Government and could be persuaded, that  
4 might be a way something needs to be done. Moving on to  
5 60820, I think you need to add the paid staff of all of the  
6 Federal branches, as well. Again, they are people that  
7 could be influenced because they are employees of the  
8 Federal Government. 60853, there is no mention in there of  
9 issuing or having the new Commissioners swear to an Oath of  
10 Office, I believe the State requires that and it perhaps  
11 should be mentioned. In 60858 - (c), in particular - the  
12 quorum is really not defined and needs to be in the 2-2-1  
13 pattern, from the largest 2 to the next largest, and one  
14 from the other category. And I feel strongly that we do  
15 need to continue that distribution throughout all of the  
16 really important votes that the Commission will take. One  
17 of the previous speakers made a comment about it being a  
18 slow process to get consensus, to get that kind of an  
19 agreement, to get things rolling for the Temporary Chairman  
20 and Vice Chairman, maybe we ought to think about having an  
21 escape clause to prevent a deadlock. Perhaps the Auditor  
22 could provide a temporary Moderator in order to make sure  
23 that things continue to flow within the Commission, just a  
24 thought. In 60858(e), there is a mention that the Chair and  
25 Vice Chair need to be from different parties. I think what



1 you mean is from different groups; in other words, one of  
2 them should be from the largest party, one from the next  
3 largest party, one from the other category. The possibility  
4 here is that both of them could be from minority parties.  
5 In 60859, again, Federal, Executive and Judicial Branches, I  
6 believe, need to be included in the exclusions. In 60860,  
7 add a suggestion that the review of candidate interview  
8 videos is an option to the eight, when they are trying to  
9 pick the six. That is just another piece of information  
10 that contributes to their ability to make an informed  
11 decision. In 60860, some things need to be added. First of  
12 all, informing a slate and putting it into the pool of  
13 slates to be considered, the one that is selected for a vote  
14 from that pool needs to be done on a random basis, maybe not  
15 as elaborate as we have done with the Bingo machine, but  
16 somehow first in, first out does not work, it needs to be  
17 select one randomly and subject that to a vote. Secondly,  
18 any slate receiving five affirmative votes in the 2-2-1  
19 pattern is the final slate, and all others need to be  
20 discarded. And I think that needs to be mentioned in the  
21 Regulations. In 60860(g), the slate winning approval is  
22 final and all other slates be disregarded. In 60860.1, I  
23 named a new one for you, "training of the remaining six in  
24 how to proceed with meetings" needs to be equivalent to that  
25 training that was given to the initial eight, and there is

1 no mention in these Regulations of training the additional  
2 six. I understand that all 14 need to be trained in how to  
3 go about doing the act of redistricting, but running  
4 meetings, the open meeting law, things of that nature, that  
5 are necessary for the first six, the final eight need to  
6 receive the same training. Another new one, "60860.2," I  
7 called it, selection of Permanent Chair and the Permanent  
8 Vice Chair with nine votes in a 3-3-3 distribution. Okay,  
9 again, I think that is very important, that we get consensus  
10 across the board, at least the appearance of consensus  
11 across the board, and that we have got the people we want to  
12 have as the Chairman and Vice Chair. A lot more information  
13 in the document that I provided, but these are some of my  
14 reasons and some of the things I wanted to highlight. Do  
15 you have any questions?

16 MS. REILLY: Thank you. Do we have any questions?

17 MR. RUSSO: No.

18 MS. REILLY: No?

19 MS. NEVILLE: I just had a couple of questions. One  
20 of the proposals that you suggested was this notion of  
21 randomness, and the voting on the slates, and I wanted to  
22 ask if you could speak to that a little bit more and explain  
23 the rationale for proposing that.

24 MR. WRIGHT: Well, what the regulation states is  
25 that any of the members, any of the eight members of the

1 Commission, may propose a slate of six names, okay, and the  
2 slate is an entity all by itself, okay, must be voted on as  
3 a slate, not as individuals, and that is fine, that works  
4 great. Let's say that four of the members each have  
5 submitted a slate, and those four are on the table. Now,  
6 which one do you address first? Which one do you debate  
7 first, okay, and that is where randomness, I think, should  
8 come in. The four are shuffled, and pick one off the top of  
9 the pile, number them, put the numbers in a hat, pick a  
10 number from the hat, something like that.

11 MS. NEVILLE: And so why would randomness be  
12 preferable to the way in which a state body would function,  
13 where the four possibilities would be laid on the table, and  
14 then the body would sort of use Robert's Rules of Order to  
15 decide which of those options to take up first for  
16 consideration, where there would be a kind of deliberative  
17 process among the members?

18 MR. WRIGHT: Certainly an option, and that leads to  
19 competitiveness, both among the people proposing the slate,  
20 and among the people who are contained within the slate.  
21 Personally, I would rather see things handled, "Let's focus  
22 on one, and is this the one that we want? If we don't want  
23 it, then discard it and move on to another one."

24 MS. NEVILLE: I see what you are saying now.

25 MR. WRIGHT: Rather than, "Oh, A vs. B," and a lot

1 of discussion.

2 MS. NEVILLE: I see what you are saying, so you  
3 would randomly select the first one that you might consider,  
4 and then it might very well be that there is no second of  
5 emotion to vote on that slate -

6 MR. WRIGHT: Exactly.

7 MS. NEVILLE: -- and then you would proceed.

8 MR. WRIGHT: Or it might fail a vote, and then you  
9 move on to another one selected randomly.

10 MS. NEVILLE: I see.

11 MR. WRIGHT: I think it - in my mind, it is a fairer  
12 way to proceed.

13 MS. NEVILLE: I see. Thank you. And just one  
14 other, just a comment that I wanted to make just about a  
15 couple of the things that you are proposing here because, as  
16 Sharon mentioned earlier, one of the things that we have  
17 worked very hard in these Proposed Regulations is to be sure  
18 that what we are doing is consistent with the State  
19 Auditor's authority related to the application process, and  
20 to us that extends up and until the full 14-member  
21 Commission comes into existence and has been selected. Once  
22 we get to that point where the full 14-member body exists,  
23 it is a separate independent legal body and we are not  
24 really trying to regulate their activities.

25 MR. WRIGHT: Does it exist before they have been

1    sworn in or only after they have been sworn in?

2                    MS. NEVILLE:    Good question, and usually from the  
3    date of selection, but it is an important point.    And just  
4    to be very clear, though, we very much share the concerns  
5    expressed here about wanting this transition to be very very  
6    smooth, and we want to make sure that we are doing  
7    everything we can to make sure that the full Commission gets  
8    off on solid ground.

9                    MR. WRIGHT:    And looking at the calendar from the  
10   selection of the first eight, around the 20<sup>th</sup> of November,  
11   they have got 40 days - the 14 have to be in place by the  
12   31<sup>st</sup>, and you have got two holidays in there.

13                   MS. NEVILLE:    I know.

14                   MR. WRIGHT:    Okay, so things have got to move real  
15   quick.

16                   MS. NEVILLE:    Absolutely.

17                   MS. REILLY:    Right, and we are working with the  
18   Secretary of State's Office to ensure that there is a smooth  
19   transition.    The Secretary of State, once the Commission is  
20   formed, the Secretary of State has the authority to help  
21   them transition into their new role.

22                   MR. WRIGHT:    Let's see, will we have a new Secretary  
23   of State by then?

24                   MS. REILLY:    I am not sure.

25                   MR. WRIGHT:    Are they up for election in November?

1           MR. RUSSO: I believe that the current Secretary of  
2 State is not termed out, so I think that it depends on the  
3 result of the election.

4           MR. WRIGHT: Thank you for the time, folks.

5           MS. REILLY: Okay, thank you.

6           MR. WRIGHT: You guys are doing a fantastic job.

7           MS. REILLY: Thanks.

8           MR. WRIGHT: Continue to do a fantastic job.

9           MS. REILLY: We appreciate the support. Is there  
10 anybody else who would like to make public comments? Okay,  
11 we are slated to be open until Noon, so at this time we will  
12 take a recess.

13                       (Off the record at 10:59 A.M.)

14                       (Back on the record at 12:00 Noon.)

15           MS. REILLY: At this time, I would like to reconvene  
16 the meeting, the hearing, excuse me, and seen that the hour  
17 of 12 o'clock has arrived, we will now adjourn.

18                       [Adjourned at 12:01 P.M.]

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**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a notary public and certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF,

I have hereunto set my hand this 1st day of June, 2010.

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TAHSHA SANBRAILO  
CER\*\*D-482  
Commission #1775172